

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Legend

Decedent =
Date 1 =
Date 2 =
Date 3 =
Trust =
Fund =
Bank =
Charity 1 =
Charity 2 =
Settlement
Agreement =

Order =
Court =
State =

Dear :

This is in response to a letter from your authorized representative, dated September 12, 2007, requesting a ruling as to whether the estate is entitled to a charitable deduction under section 2055(a) of the Code.

Decedent died testate on Date 1. Bank was appointed executor of Decedent's estate by the Court.

Pursuant to Decedent's last will and testament (will) dated Date 2, his entire estate is to be held in Trust. Article 3 of Decedent's will provides the terms of Trust and states, in part, as follows:

3.1 The trust estate shall be retained as [Trust]. Upon the establishment of this fund, the trustee shall be authorized to distribute the income at least annually to [Charity 1]. In its discretion the trustee may accumulate income from time to time, considering the opportunities for growth of accumulated principal and tax implications, if any. The funds distributed to [Charity 1] are to be used for construction of a school for the purpose of educating students both secular and non-secular subjects. Instruction in areas of secular education shall be consistent with the religious doctrine of the church.

Thirty (30) years after my death, the trust principal and any accumulated income shall be distributed in equal shares to [Charity 1] and [Charity 2]. The share distributed to [Charity 1] shall be used for construction of the school set forth in [this] paragraph 3.1 as well as related operating expenses and staff compensation. The share distributed to [Charity 2] shall be allocated only between scholarship funds and capital improvement funds, as it deems appropriate.

Should any distribution to a beneficiary lapse for any reason, the lapsed share shall be distributed [to] . . . the remaining [beneficiary].

3.3 [sic] This trust is intended to qualify as charitable trust exempt from taxes of the Internal Revenue Code and is to be administered so as to qualify for the exemption from taxation provided therein. In furtherance of that intent, the trustee may amend the terms of the trust for the sole purpose of complying with the requirements of the Internal Revenue Code and the regulations issued thereunder in order that this trust shall qualify and continue to qualify as a charitable trust.

Charity 1 and Charity 2 filed separate proceedings in the Court, each contending that the terms of Trust as provided in the will failed to create a valid charitable trust. Charity 1 and Charity 2 disagreed, among other things, on the extent to which income was to be distributed or accumulated. The Charities also disagreed on the amount to which each should realize from Trust. Finally, each filed malpractice actions against the drafter of the instrument.

Charity 1 and Charity 2 reached an accord and entered into an agreement (Settlement Agreement). The State Attorney General was joined as a party to each of the probate proceedings and indicated that she did not object to the Settlement Agreement.

Pursuant to the Agreed Order (Order), the Settlement Agreement was entered and approved by the Court on Date 3. The pertinent terms of the Order are as follows:

1. A. 12.5% of the net estate shall be distributed to [Charity 2], the funds to be allocated only between scholarship funds and capital improvement funds, as it deems appropriate.

B. 87.5% of the net estate shall be distributed to [Charity 1] to be retained as the [Fund] to be administered by the governing board of [Charity 1] as follows:

1) [Charity 1] may utilize the annual income for construction as well as related operating expenses and staff compensation of a school for the purposes of educating students in both secular and non-secular subjects. Instructions in areas of secular education shall be consistent with religious doctrine of [Charity 1]. Any income not currently utilized shall be accumulated and may be utilized in subsequent years for such educational expenses.

2) Thirty (30) years after the death of [Decedent], [Charity 1] may utilize the entire principal and accumulated income of the [Fund] for construction as well as related operating expenses and staff compensation as described above.

3) [Charity 1] will submit documentation to the executor as to its establishment of the [Fund] as a restricted account.

Paragraph 2 of the Order provides that the construction of the will shall be contingent on the estate receiving a private letter ruling from the Internal Revenue Service indicating that the proposed distributions to [Charity 2] and [Charity 1] qualify for an estate tax deduction.

Your authorized representative has requested that the proposed distributions to Charity 1 and Charity 2 in accordance with the Settlement Agreement as provided in the Order will qualify for an estate tax deduction under section 2055(a).

Section 2055(a)(2) provides that for purposes of the estate tax, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes.

In Rev. Rul. 89-31, 1989-1 C.B. 277, the decedent bequeathed the residue of the estate to a trust the terms of which provided that income was to be paid to A, an individual, for A's life and the remainder was to be paid to a charitable organization described in sections 170(c) and 2055(a). In good faith, A challenged the validity of the will, and as a result of a settlement, the estate made an immediate payment to A and distributed the balance of the trust to the charitable organization. The revenue ruling

holds that the amount paid to the charitable organization qualifies for the estate tax charitable deduction under section 2055(a).

In this case, Trust was established under Decedent's will for the benefit of Charity 1 and Charity 2. A bona fide conflict arose between Charity 1 and Charity 2 with respect to how income was to be distributed and the extent to which each charity was to benefit under the terms of Trust. To resolve their differences, the parties entered into Settlement Agreement, which provides for the immediate distribution of the assets of Trust to Charity 1 and Charity 2. The State Attorney General was joined as a party to the proceedings and did not object to the agreement. In addition, the Settlement Agreement was approved by Court. Based on the facts and representations made and assuming that the other requirements of section 2055(a) are satisfied, the value of Trust's assets distributed to Charity 1 and Charity 2 pursuant to the Settlement Agreement will qualify for the estate tax charitable deduction under section 2055(a)(2).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

James F. Hogan
Senior Technician Reviewer, Branch 4
(Passthroughs & Special Industries)

Enclosure (2)
Copy for § 6110 purposes
Copy of this letter

cc: